

## HOME CONTRACT PROVISIONS M-55

This Addendum is required for funding under the State of South Carolina's HOME Investments Partnerships Program (HOME)

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**Definitions:** For purposes of this Contract, the following terms shall have the meanings set forth below:

- (a) "Assistance" means the HOME funds provided, or to be provided, to the Recipient by the State, pursuant to the HOME Award Agreement.
- (b) "HOME" means HOME Investment Partnerships Program.
- (c) "Contract" means the contractual agreement between the Owner and the Contractor to which these Contract Provisions have been incorporated and made a part thereof.
- (d) "Contractor" means the contractor whose services are retained pursuant to the Contract.
- (e) "Recipient" means the entity designated as the recipient of the Assistance in the HOME Award Agreement and signing the acceptance provision of the Award.
- (f) "HUD" means U.S. Department of Housing and Urban Development, which is the federal agency that awards and has authority over HOME funding to the State.
- (g) "Owner" means the Recipient, as applicable.
- (h) "Project" means the project for which the services of the Contractor have been retained pursuant to the Contract which are funded, in whole or in part, with HOME funds.
- (i) "State" means the State of South Carolina, or that agency, agency division, or Office of State government which has been delegated the responsibility for administering the HOME program for the State of South Carolina, as appropriate.
- (j) "Labor Surplus Area" means a civil jurisdiction that has an unemployment rate at least 20% above the average unemployment rate for all states, the District of Columbia, and Puerto Rico during the previous two calendar years. The Department of Labor issues the labor surplus area list on a fiscal year basis.

### **General Conditions:**

**1. Scope of Services:** The Owner employs the Contractor to construct or rehabilitate as specified in the work write-up or plan and specifications upon premises known as \_\_\_\_\_. The Contractor shall perform all of the services and furnish all the material and equipment necessary to construct and/or make the improvements set forth in the Designs/Plans and Specifications, which are attached and made a part by this reference.

**2. Indemnification:** Contractor agrees to indemnify, defend and hold the Owner harmless from any and all claims, liabilities, obligations, governmental penalties, fines and causes of action of whatsoever nature, including injury to or death of any person or damage to or destruction of any property, or court costs or attorney's fees resulting from any and all negligent acts or omissions of Contractor or any Subcontractor to this Agreement or any of their respective Directors, Officers, Partners, Principals, Employees or Agents. Neither this Agreement nor any Subcontract will create any contractual relationship between any Subcontractor and Engineer, nor any liability of Engineer to any Subcontractor.

**3. Time for Completion:** The Contractor will begin work when this contract has been signed and a written Notice To Proceed has been executed. The Contractor will then commence work within the time frame identified in the Notice to Proceed. The Contractor shall satisfactorily complete all work under this contract within \_\_\_ days after the issuance of the Notice to Proceed by the Owner. If the work is not completed by the specified date and the contractor has not requested in writing and received in writing a contract extension, the Owner shall have the option to hire another Contractor to complete the work.

**4. Insurance:** The Contractor shall furnish evidence of comprehensive public liability insurance coverage protecting the Owner for not less than \$100,000 per person/\$1,000,000 per accident and property damage insurance coverage for not less than \$100,000 for any one accident arising from work performed by the Contractor, any of his subcontractors, or any direct or indirect employee of either of them. Contractor shall also provide automobile liability in the amount of \$100,000 per occurrence

5. Evidence of insurance or other coverage required by local laws governing Workmen's Compensation will also be proved by the Contractor.
6. **Payment and Performance Bond:** The development of units exceeding \$150,000 must be bonded if HOME funds are to be drawn down during the construction phase.
7. **Assignment of Contract:** The Contractor shall not assign the Contract without written consent of the Owner.
8. **Permits, Fees, Engineering Studies and Registered Surveys:** The contractor shall obtain and pay for all necessary permits, inspection charges (not conducted by the Owner) and licenses for the authorization and execution of the work and labor performed. The Owner shall furnish all engineering studies as required and specified.
9. **Compliance with Code:** The Contractor shall perform all work under the Contract in conformance with applicable codes, ordinances, regulations and requirements per Federal, State and local regulations.
10. **Cooperation:** The Owner shall cooperate with the Contractor to provide access to the dwelling units for the performance of the work.
11. **Occupancy of Premises:** Unless otherwise stated, it shall be assumed that the premises will be unoccupied during the course of construction.
12. **Inspection:** The Contractor shall permit authorized persons access to the unit to inspect and examine the work during all working hours. These persons include agents of the U.S. Government, its designee, and the Owner or his designees. If any work is covered up without approval or consent of the Owner, it must, if required, be exposed for inspection at the Contractor's expense. All defects caused by the Contractor, or his subcontractors, shall be corrected at the Contractor's expense.
13. **Guarantee:** The Contractor shall guarantee the work performed and materials and equipment for a period of one year from the date of final acceptance of all work required by the contract documents. Further, the Contractor shall furnish the Owner with all manufacturers and suppliers written guarantees and warranties covering materials and equipment furnished under the requirements of the contract documents. All defects appearing within the one-year period, which are the fault of the Contractor or are the result of defective material, shall be corrected at his expense.
14. **Default:** In case of default by the Contractor, the Owner may procure articles or services from other sources and hold the Contractor responsible for any excess cost incurred.
15. **Notice:** Notices to the Contractor shall be considered delivered for the purpose of the contract, if mailed by regular mail or hand delivered to the Contractor at the address that was given on the Bid.
16. **Changes:** It is agreed that there shall be no changes to the contract and the work covered unless, for essential work which causes a change in cost and/or performance time, a mutually-agreed-to change has been put in writing and signed by the Owner and Contractor and with the concurrence of the Authority.
17. **Time for Performance:** The Contractor shall begin performance within the time frame identified in the notice to proceed. Work to be performed by the Contractor shall be completed within the period of time stated in the Contract. However the Contractor, on written notification to and approval of the Owner, will be excused from delay charges and a performance time extension granted if, at any time in the progress of the work, delays are caused by:
- a. Any act or neglect of the Owner
  - b. Changes ordered in the work

- c. Strikes
- d. Lockouts
- e. Fire (if not caused by the Contractor)
- f. Delay in transportation
- g. Unavoidable casualties
- h. Or any other causes beyond the Contractor's control.
- i. Liquidated damages can be added in the contract as long as the daily charges can be justified.

18. **Disputes:** The Owner shall, within a reasonable time, make decisions on all claims of the Contractor submitted to the Owner in writing. In the event of a dispute that cannot be resolved between the Owner and the Contractor, the dispute shall be presented to an independent arbitrator. The decision of the independent arbitrator shall be final.

19. **Workmanship:** The work provided by the Contractor shall be executed pursuant to the plans, specifications, and/or work write-ups or other contract documents in a sound, workman-like, and substantial manner. Materials used in the construction shall be new, unless otherwise expressly set forth in the specifications.

20. **Supervision:** The Contractor shall provide a competent supervisor who is capable of understanding the plans and specifications. All supervisors shall have successfully completed the Worker Protection and Safety course. The Contractor shall keep a complete set of approved plans and specifications on the job site.

21. **Termination:** This contract may be terminated if: a. At any time the Contractor fails to furnish materials or execute work in accordance with the provisions of the contract documents, fails to proceed with or complete the work within the time limit specified in the contract documents or otherwise violates any provision of the Agreement, the Owner shall have the right to terminate the Agreement upon ten (10) days written notice to the Contractor. In this event, the Owner will proceed to have the work completed and apply the cost to any money due under the Contract. The Contractor shall be responsible for any damages or added cost resulting by reason of this default. b. At any time the Owner fails to cooperate with the Contractor by denying access to the property, refusing to furnish necessary services, or otherwise prohibiting completion of work as specified in the Agreement, the Owner shall have ten (10) days from notice to cure such deficiencies. Notice to Owner shall contain the reason for the Contractor's intention to terminate. Unless the deficiency ceases or a satisfactory arrangement has been made for its correction, the Contractor shall have the right to terminate the Agreement at the end of the ten (10) day notice period. After termination, the Contractor will be reimbursed for services rendered to the termination date upon submission to the Owner of detailed supporting documentation. The Contractor will not be entitled to profit or other compensation on services not performed.

22. **Payments:** The amount of ten (10) percent will be retained until the Contractor submits a request for final payment. Final payment for this Contract shall be made only after final inspection, final clearance, acceptance of all work specified and the Contractor furnishing the Owner satisfactory releases of liens or claims against the property by his subcontractors, laborers, and material suppliers. The amount of ten (10) percent of the final payment may be retained in escrow for a period of up to thirty (30) days to cover contract compliance or until completion of all work.

23. **Non-Collusive Affidavit:** Each person submitting a bid for any portion of the work contemplated by the bidding documents shall execute an affidavit in the form provided by the Owner to the effect that he has not colluded with any other person, firm or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid.

24. **Limitations of Indemnification:** In any and all claims against the Owner or any of its agents or employees by any employee of the Contractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under Paragraph Two (2) of these General Conditions shall not be

limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workman's Compensation, Disability Benefit or other Employee Benefits Acts.

**25. Captions:** The Captions in these General Conditions are for the purposes of convenience only and form no part of the General Conditions. In no event shall they be deemed to limit or modify the text of the General Conditions.

**26. Severability:** The invalidity or unenforceability of any portion(s) or provisions(s) of this agreement shall in no way affect the validity or enforceability of any other portions(s) or provision(s) thereof. Any invalid or unenforceable provision(s) shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion(s) or provision(s) held to be invalid and/or unenforceable.

#### **HOME Contract Provisions:**

**1. Limitation of Liability:** The contractor will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the owner. This provision is not applicable to contracts for administration services where the contractor is a Council of Government or a Regional Planning Agency.

**2. Ownership:** Ownership of all real or personal property, acquired in whole or in part with HOME funds for use on this project, shall be vested in the recipient. When the recipient determines that the property is no longer required for the purposes of this project, the recipient must notify the Authority and obtain approval for disposition of the property in accordance with applicable guidelines.

**3. Agreement/Contract:** If any provision in this agreement/contract shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this agreement/contract, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision. The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

**4. Federal, State and local laws, ordinances and codes** are subject to change from time to time as they are promulgated. The Contractor agrees to comply with all HOME requirements as well as other federal and state laws, regulations, or Executive Orders. The State reserves the right to add or delete terms and conditions of this Contract as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the HOME Program. The contractor shall be notified in writing of any such changes when they occur and they shall be incorporated in writing to this contract/agreement upon concurrence by both parties unless such changes are considered to have an essential impact upon the intent of this agreement/contract and then they shall be incorporated upon notification to the contractor.

**5. Termination for Convenience:** This agreement may be terminated for convenience in accordance with 24 CFR, 85.44.

**6. Amendments:** Any changes to this contract affecting the scope of work of the project must be approved, in writing, by the Owner and Contractor and shall be incorporated in writing to this contract. Any cost amendments of the original contract price must have written approval by Authority prior to execution.

**7. Copyright:** Except as otherwise provided in the terms and conditions of this contract, the contractor paid through this contract is free to copyright any books, publications or other copyrightable materials developed in the course of and under this contract. However, the federal awarding agency and state funding agency (SFA) reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for federal government and SFA purposes: (a) the copyright in any work developed

under this contract; and (b) any rights of copyright to which a subcontractor purchases ownership with grant support. The Federal Government's rights and the SFA's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

**8. Terms and Conditions:** The State reserves the right to add or delete terms and conditions of this contract as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the HOME Investment Partnerships Program.

**9. Reporting Requirements:** The Contractor agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the State or HUD. Further, the Contractor agrees to require any subcontractors to submit reports that may be required and to incorporate such language into its agreements. Failure to meet deadlines with the required information could result in sanctions.

**10. Sanctions:** If the Contractor fails or refuses to comply with the provisions set forth herein, the State or Owner may take any or all of the following sanctions: cancel, terminate or suspend in whole or in any part the contract, or refrain from extending any further funds to the Contractor until such time as the contractor is in full compliance.

**11. Applicable Law:** In addition to the applicable Federal Laws and Regulations, this contract is also made under and shall be construed in accordance with the laws of the State of South Carolina. By execution of this contract, the contractor agrees to submit to the jurisdiction of the State of South Carolina for all matters arising or to arise hereunder, including but not limited to performance of said contract and payment of all licenses and taxes of whatever kind or nature applicable hereto.

**12. Compliance with Air and Water Acts:** (Applicable to construction contracts and related subcontracts exceeding \$150,000.) This contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time.

(1) A stipulation by the contractor or subcontractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

(2) Agreement by the Contractor to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 USC 1857c-8-0 and section 308 of the Federal Water Pollution Control Act, as amended (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said section 114 and 308, and all regulations and guidelines issued there under.

(3) A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.

(4) Agreement by the Contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this agreement, in every nonexempt subcontract and requiring that the contractor will take such action as the State may direct as a means of enforcing such provisions. In no event shall any amount of assistance provided under this agreement be utilized with respect to a facility which has given rise to a conviction under section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

**13. Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five years after the final close-out report. However, if any litigation, claim, or audit is started before the expiration of the five year period, then records must be retained for five years after the litigation, claim or audit is resolved.

**14. Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to small and minority and women's owned businesses. Accordingly, affirmative steps must be taken to assure that small, minority and women owned businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists;

(2) Assuring that small, minority and women owned businesses are solicited whenever they are potential sources;

(3) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small, minority and women owned businesses' participation;

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority businesses; and

(5) Using the services and assistance of the Small Business Administration, the Governor's Office of Small and Minority Business Assistance, the Department of Commerce and the Community Services Administration as required.

(6) Requiring the subcontractor, if any to take the affirmative actions outlined in (1) – (5).

**15. Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Contractor under this contract, which the Agency requests to be kept confidential, shall not be made available to any individual or organization by the Contractor without prior written approval of the recipient or the State, as applicable.

**16. Access to Records:** All records with respect to all matters covered by this contract shall be made available for audit and inspection by HUD, the State, or the recipient or their representatives upon their request.

**17. Prime Contractor Responsibilities:** The Contractor is required to assume sole responsibility for the complete effort and enforcement of laws and regulations under this contract. The owner will consider the Contractor to be the sole point of contact with regard to contractual matters.

**18. Subcontracting:** If any part of the work covered by this contract is to be subcontracted, the Contractor shall identify the subcontracting organization and the contractual arrangements made therewith to the owner and the State. All subcontracts must be approved by the owner to insure they are not debarred or suspended by the Federal or State Governments and to insure the owner understands the arrangements.

**19. Legal Services:** No attorney-at-law shall be engaged through the used of any funds provided under this contract in any legal action or proceeding against the State, the recipient, or any Local Public Body or political subdivision.

**20. Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this contract shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of the "Hatch" Act, Section 8-13-765 of the Code of Laws of South Carolina, 176, as amended.

**21. Reporting of Fraudulent Activity:** If at any time during the term of this contract anyone has reason to believe by whatever means that, under this or any other program administered by the State, a subrecipient or other third parties of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this or any other contract, such information shall be reported to the appropriate authorities.

**22. Age Discrimination:** In accordance with 45 CFR, parts 90 and 91, the Contractor agrees there shall be no bias or age discrimination as to benefits and participation under this contract.

**23. Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the

benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under the State HOME program. All construction contracts exceeding \$10,000 must contain provisions effectuate to this prohibition as required by Executive Order 11246, as amended.

**24. Section 3, Compliance and Provision of Training, Employment and Business Opportunities:** The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The parties to this said contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135. Section 3 Clause:

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low- income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

D. Apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

E. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause , upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

F. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

G. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

H. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires to the greatest extent feasible (i) preference and

opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b). The contractor will certify that any vacant employment positions including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135. The contractor agrees to submit such reports as required to document compliance with Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**25. Section 504 of the Rehabilitation Act of 1973, as amended:** The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

**26. Lead-Based Paint:** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the following regulations:

- 24 CFR 92.355
- Lead-Based Paint Poisoning Prevention Act of 1971 – 42 U.S.C. 4821 et. Seq
- 24 CFR 982.401(i) (except paragraph 982.401(j)(1)(i))
- EPA's Renovation, Repair, and Painting Rule – 40 CFR Part 745
- 24 CFR Part 35 - The regulation is divided into subparts, of which the following apply to the HOME program:
  - Subpart A: Disclosure
  - Subpart B: General Requirements and Definitions
  - Subpart J: Rehabilitation
  - Subpart K: Acquisition, Leasing, Support Services, and Operations
  - Subpart R: Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

**27. Debarment Certification:** The contractor must comply with the Federal Debarment and Suspension regulations of Executive Order 11246 prior to entering into a financial agreement for any transaction as outlined below.

(a) Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$150,000 and is cumulative amount from all federal funding sources).

(b) Any procurement contract for goods and services, regardless of amount, under which the Contractor will have a critical influence on or substantive control over the transaction.

**28. Equal Employment Opportunity:** The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and the rules, regulations, and relevant orders of the State. In carrying out the program, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for project or program. The Contractor will, in all solicitations or advertisements for employees by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Contractor will send to each



labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State advising the said labor union or workers' representatives of the contractor's commitment under this Section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the State. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to his books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or order of the State, or as otherwise provided by law. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 25, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the State the contractor may request the State to enter into such litigation to protect the interest of the State. The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Grantee so participating is a local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

**29. Federal Labor Standards Provisions:** U.S. Department of Housing and Urban Development, Office of Labor Relations form HUD-4010 (07/2003) ref. Handbook 1344.1 (**Applicable to construction contracts in excess of \$2,000 and residential rehabilitation contracts involving more than twelve units. These regulations must be complied with or sanctions will be instituted.**) The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached thereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification of the time actually work therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification an wage rates conformed under 29 CFR 5.5(a)(1)(ii) and

the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215- 0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1214-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federal-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension or any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for an on account of the contractor or subcontractor to the respective

employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment of provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** the contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-

1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget Under OMB Control Number 1215-0129.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays for supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete'

**(2)** The each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment Training Administration, Office of Apprenticeship Training, Employer and Training Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as state above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every Trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate, that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by

appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provided in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$150,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violations of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted

contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$150,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to this health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et. seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

30. **Byrd Anti-Lobbying Amendment** (31 USC 1352) Contractors who apply or bid for awards in excess of \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization influencing or attempting to influence an officer employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier should disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

31. **South Carolina Illegal Immigration Reform Act:** The Owner and the Contractor are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.

32. **Conflicts of Interest and Ethical Standards, South Carolina Consolidated Procurement Code:** The following provisions regarding the "conflicts of interest" apply to the use and expenditure of HOME funds by the Grantee and its recipients, including the contractor. In the procurement of supplies, equipment, construction and services, the more restrictive conflict of interest provisions of the State of South Carolina Ethics, Government Accountability and Campaign Reform Act of 1991 or of the Contractor shall apply. In cases not governed by the above, such as the acquisition and disposition of real property and the provision of HOME assistance to individuals, businesses and other private entities, the following provisions shall apply. Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State or a unit of general local government or any designated public agencies or subrecipient which are receiving HOME funds who exercise or have exercised any function or responsibilities with respect to HOME activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the State on a case by case basis as requested upon full disclosure in writing.

(a) Official Position Not To Be Used For Financial Gain SECTION 2: Section 8-13-410 of the 1976 Code is amended to read:

(1) "No public official or public employee shall use his official position or office to obtain financial gain for himself.

(2) No public official or public employee shall participate directly or indirectly in a procurement when he has knowledge or notice that:

(a) he or any business with which he is associated has financial interest pertaining to the procurement;

(b) any other person, business, or organization with whom he or a member of his household is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

(3) Where a public official or public employee or any member of his household holds a financial interest in a blind trust, he shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust has been made to the appropriate supervisory office."

(b) **Breach of Ethical Standards SECTION 3:** Section 8-13-420 of the 1976 Code is amended by adding the following paragraph at the end: "It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. The prohibition against gratuities and kickbacks prescribed in this paragraph shall be conspicuously set forth in every contract and solicitation thereof."

(c) **Breach Of Ethical Standards, Administrative Remedies SECTION 4:** The 1976 Code is amended by adding: **Section 8-13-500**

(1) Except as may be permitted by regulations of the State Ethics Commission, it shall be a breach of ethical standards for any public employee or public official who is participating directly in the procurement process to resign and accept employment with any person contracting with the governmental body with whom the public employee or public official is associated.

(2) No person shall use a former public employee or public official knowingly to act as principal or as an agent for anyone other than the State or other governmental entity with whom he is associated in connection with any judicial or other proceeding, application, request for ruling, or other determination, contract, claim or charge or controversy in which the public employee or public official participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while such a public employee or public official where the State or other governmental entity is a party or has a direct and substantial interest.

(3) It shall be a breach of ethical standards for a business, in which a public employee or public official has a financial interest, knowingly to act as a principal or as an agent for anyone other than the state or other governmental entity with which he is associated in connection with any contract, claim or controversy, or any judicial proceeding in which the public employee or public official either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the official's or employee's official responsibility, where the state or governmental entity is a party or has a direct and substantial interest.

#### **Section 8-13-510**

(1) The provisions of this section and Sections 8-13-530 shall be in addition to all other civil and administrative remedies against public employees or public officials which are provided by law.

(2) In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose an oral or written warning or reprimand.

(3) The value of anything received by a public employee or public official in breach of ethical standards of this chapter or regulations promulgated hereunder shall be recoverable by the State or other governmental entity in an action by the Attorney General against anyone benefiting from such violations.

(4) Before a public employee's employment or a public official's association with the State or governmental entity is terminated for a violation of the provisions of this chapter, notice and an opportunity for a hearing shall be provided to the public official or public employee.

#### **Section 8-13-520**

(1) The provisions of this Section and Sections 8-13-510 and 8-13-530 shall be in addition to all other civil and administrative remedies against nonpublic employees or officials which are provided by law.

(2) In addition to existing remedies for breach of the ethical standards of this chapter or regulations promulgated hereunder, the State Ethics Commission may impose against a nonpublic employee or official any one or more of the following:

(a) written warnings or reprimands;

(b) debarment or suspension from being a contractor or subcontractor under public contracts. Actions under this section may be appealed to the appropriate administrative review panel, as authorized under section 11-35-4410, within ten days of the actual notice of debarment or suspension to the affected party.

(3) The value of anything transferred in breach of the ethical standards of this chapter or regulations promulgated hereunder by a nonpublic employee or official shall be recoverable by the State or other governmental entity involved in any action by the Attorney General against anyone benefiting from such violations.

**Section 8-13-530**

(1) "The value of anything transferred or received in breach of the ethical standards of this chapter or regulations promulgated hereunder by a public employee, public official, or nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.

(2) Upon showing that a subcontractor in connection with the award of a subcontract or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the State or governmental entity and shall be recoverable hereunder from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties." Should any recipient, contractor, subcontractor, employee or official know or perceive any breach of ethical standards or conflict of interest under this or any other Authority grant, they shall immediately notify in writing the South Carolina State Housing and Development Authority, HOME Program, 301-C Outlet Pointe Blvd., Columbia, South Carolina, 29210. If the Authority finds any circumstances that may give rise to a breach of ethical standards or conflict of interest, under any grant, they shall notify the participating recipient and the State Ethics Commission as appropriate. The Authority may undertake any administrative remedies it deems appropriate, where there is a breach of ethical standards or conflict of interest under the regulations governing the HOME program and policies.

Signed and Executed this day of \_\_\_\_\_.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor (Print Name)

\_\_\_\_\_  
Owner (Print Name)